

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

**W.P.V., on his own behalf and on behalf of
His minor child, W.P.O.,
Plaintiff,**

v.

**UNITED STATES OF AMERICA,
Defendant.**

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EP-23-CV-00074-DCG

JOINT STATUS REPORT

Plaintiff, W.P.V., on his own behalf and on behalf of his minor child, W.P.O., and Defendant, United States of America (hereafter the Parties) file this Joint Status Report, in compliance with the Court's Order for Joint Status Report (ECF No. 95), and would respectfully show the Court the following:

I. Factual Background

Plaintiffs are a father (W.P.V) and son (W.P.O.) from Honduras who crossed the United States-Mexico border in May 2018 near El Paso, Texas. ECF No. 4, ¶¶ 46, 51, 52. Shortly after crossing the border, Plaintiffs were apprehended by U.S. Customs and Border Protection (CBP) agents. ECF No. 68, ¶ 9. Plaintiffs were interviewed by Border Patrol agents and transported to CBP's Paso Del Norte Patrol Processing Center (PDT) in El Paso, Texas. *Id.*, ¶¶ 10-12.

Plaintiffs were separated from each other during their initial custody at PDT. ECF Nos. 4, ¶ 66; 68, ¶¶ 11-17. On or about May 25, 2018, Plaintiff W.P.V. was transferred to the United States Marshal's Service (USMS) for detention at the El Paso County Detention Facility (EPCDF). ECF No. 68, ¶ 17. That same day, Plaintiff W.P.O was processed, as an unaccompanied alien child (UAC). *Id.*, ¶ 16. On May 26, 2018, Plaintiff W.P.O was placed with the Office of Refugee Resettlement (ORR) as a UAC and remained in the legal custody of ORR from May 26, 2018 to

July 1, 2018. ECF No. 69, ¶ 4. Plaintiff W.P.V was deported to Honduras on July 11, 2018. ECF No. 70, ¶ 9.

Plaintiffs filed suit against Cayuga Home for Children, Inc., d/b/a Cayuga Centers and the United States in the Southern District of New York on May 18, 2021. ECF No. 4. Plaintiffs' suit against the United States is premised on the Federal Tort Claims Act (FTCA). *Id.*, ¶ 9. They allege causes of action for intentional infliction of emotional distress and negligence. *See id.*, ¶¶ 133-141. Plaintiffs have settled their claims against Cayuga Centers. *See* ECF No. 90.

Defendant United States denies any allegations of negligence, or any other wrongdoing contained in Plaintiffs' Complaint.

A. Additional factual statements disputed by Plaintiffs¹

On May 24, 2018, the U.S. Attorney's Office for the Western District of Texas approved the criminal prosecution of Plaintiff W.P.V. under 8 U.S.C. § 1325(a)(1) based on his entry without inspection. ECF No. 68, ¶ 13. That same day, CBP notified the local Field Office Juvenile Coordinators (FOJC) and ORR's national office regarding Plaintiff W.P.O's separation from his father. *Id.*, ¶ 14. W.P.O was transferred to the Clint, Texas Border Patrol Station where he remained until May 26, 2018. *Id.*, ¶ 15. Based on the U.S. Attorney's Office's decision to prosecute Plaintiff W.P.V., Plaintiff W.P.O was processed on May 25, 2018, as an UAC. *Id.*, ¶ 16. On May 26, 2018, Plaintiff W.P.O was placed with the ORR as a UAC and remained in the legal custody of ORR from May 26, 2018 to July 1, 2018. ECF No. 69, ¶ 4. While W.P.O. was in ORR custody, he was cared for at Cayuga Centers, an ORR-funded care provider in Bronx County, New York, through its Transitional Foster Care Program. *Id.* Cayuga Centers is an ORR-funded charitable

¹ Plaintiffs do not agree that the additional statements Defendant includes are accurate, nor are they relevant for addressing any of the issues in the case at this juncture.

organization that provides care and shelter for UACs while attempting to identify a sponsor to care for the child. *Id.* On July 1, 2018, W.P.O. was released to a sponsor, his aunt in Farmers Branch, Texas. *Id.*, ¶ 5.

Meanwhile, on May 29, 2018, a criminal complaint was filed in the Western District of Texas, El Paso Division, and charged W.P.V. with violating 8 U.S.C. § 1325(a)(1). ECF No. 68, ¶ 18. On June 1, 2018, Plaintiff W.P.V. was convicted of violating 8 U.S.C. § 1325(a)(1). *Id.*, ¶ 19.

Plaintiff W.P.V. first entered U.S. Immigration and Customs Enforcement (ICE) custody on June 4, 2018, upon his release from the USMS custody at EPCDF. ECF Nos. 70, ¶ 6; 68, ¶ 19. W.P.V. was booked into the El Paso Service Processing Center in El Paso, Texas on June 4, 2018, to await his transfer, and on June 5, 2018, Plaintiff W.P.V. was transferred to the Cibola County Correctional Center in Milan, New Mexico, where he remained until June 25, 2018. ECF No. 70, ¶¶ 6-7. On June 25, 2018, Plaintiff W.P.V. was again booked into the El Paso Service Processing Center in El Paso, Texas, where he awaited his next transfer. *Id.*, ¶ 8. On June 26, 2018, Plaintiff W.P.V. was transferred to the Otero County Processing Center in Chaparral, New Mexico, where he remained until his expedited removal to Honduras on July 11, 2018. *Id.*, ¶ 9.

II. Procedural Posture

Plaintiffs filed their lawsuit on May 18, 2021. ECF No. 4. Shortly thereafter, the parties requested, and the Court granted a stay to facilitate settlement negotiations, which was later extended multiple times. ECF No. 21. After obtaining several extensions of the stay, on March 10, 2022, the parties requested that the stay be lifted because settlement discussions had not been fruitful, and that Defendants be given until May 9, 2022 to respond to the Complaint. ECF No. 49.

On May 9, 2022, the United States submitted a pre-motion letter brief requesting a pre-motion conference with respect to its anticipated motion to transfer and/or dismiss Plaintiffs' Complaint. ECF No. 56. This letter advised the Court of the Government's bases for its anticipated motion to transfer venue and motion to dismiss. *Id.* Plaintiffs' counsel and counsel for Cayuga Centers submitted responses to the United States' pre-motion letter brief advising the court of their positions. ECF Nos. 57, 60. On May 13, 2022, the Judge ordered the parties to meet and confer and submit a letter by May 20, 2022 advising the Court as to a proposed briefing schedule on Defendants' respective motions as well as the sequencing of such motions. ECF No. 58 at 3.

On May 20, 2022, the parties submitted a joint letter in compliance with the Court's order. ECF No. 61. The Government requested that the parties should not brief the motion to dismiss until the Court denied the transfer motion. *Id.* Plaintiff and Defendant Cayuga Centers disagreed with this position and submitted their own proposed timelines. *See id.* On May 22, 2022, the Court ordered that the parties proceed with the Government's motion to transfer, which should be filed by June 22, 2022. ECF No. 62 at 5. The deadline for Defendants to respond to the Complaint was stayed until one week after the Court's decision on the Government's motion to transfer. On February 14, 2023, the Court granted the Government's Motion to Transfer Venue. ECF No. 92. This case was transferred to the Western District of Texas, El Paso Division on or about February 22, 2023. *See* ECF No. 93. As of this filing, the United States has not responded to Plaintiffs' Complaint.

III. Legal Issues that Remain Undecided

As outlined in Defendant's pre-motion letter brief (ECF No. 56), Defendant intends to file a motion to dismiss based on several FTCA exceptions pursuant to Federal Rule of Civil Procedure 12(b)(1). Counsel for Defendant may also choose to include arguments based on Rule 12(b)(6) in

the United States' motion to dismiss. Defendant would respectfully request 60 days from the date of this status report to respond to Plaintiffs' Complaint.

Additionally, Defendant anticipates filing a motion for protective order to stay scheduling recommendations and discovery while its motion to dismiss is pending.

Respectfully submitted,

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Dated: March 8, 2023

/s/ Manuel Romero

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